

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OPENWAVE SYSTEMS INC.,

No. C 10-02805 WHA (JCS)

Plaintiff(s),

**NOTICE OF REFERENCE; ORDER TO
MEET AND CONFER AND FILE JOINT
LETTER; ORDER SETTING BRIEFING
SCHEDULE**

v.

MYRIAD FRANCE S.A.S.,

Defendant(s).

TO ALL PARTIES AND COUNSEL OF RECORD:

The above matter has been referred to Magistrate Judge Joseph C. Spero for resolution of 1) Myriad's Letter Compelling Discovery from Plaintiff Openwave, [Docket No. 177], and 2) The Motion by Nonparty Google for Protective Order and/or Order Quashing Third Party Subpoena, [Docket No. 184], and the related Openwave's Letter Brief Compelling Google to Comply with the Subpoena, [Docket No. 186], and all future discovery matters.

IT IS HEREBY ORDERED that lead trial counsel for all parties and lead counsel for non-party Google shall meet and confer **in person** in Courtroom A **no later than May 6, 2011**. As there are two separate areas of dispute, these may be two separate meetings. Counsel shall contact the undersigned's Courtroom Deputy, Karen Hom, at (415) 522-2035 to arrange a date and time for the meet-and-confer session.

In the event that counsel are unable to resolve the matters at issue in the Motions, lead trial counsel for the parties and lead trial counsel for non-party Google shall provide a detailed Joint Letter to the Court on each of the two disputes **no later than May 9, 2011**. These Joint Letters, not to exceed ten (10) pages without leave of Court, shall include a description of every issue in dispute and, with respect to each such issue, a detailed summary of each party's final substantive position

1 and its final proposed compromise on each issue. After the Court has received the Joint Letters, the
2 Court will determine what future proceedings, if any, are necessary.

3 As to Myriad's allegation of non-retention of documents, stated in paragraph 4 of Myriad's
4 Letter Compelling Discovery from Plaintiff Openwave [Docket No. 177], IT IS HEREBY
5 FURTHER ORDERED that:

6 1. An opening brief on whether or not documents were improperly destroyed and the
7 appropriate remedy, if any, shall be filed by **May 9, 2011**.

8 2. The opposition memorandum shall be filed by **May 16, 2011**.

9 3. The reply brief shall be filed by **May 20, 2011**.

10 The Court will determine what further proceedings, if any, are necessary.

11 **LAW AND MOTION HEARING PROCEDURES**

12 Civil law and motion is heard on Friday mornings, at 9:30 a.m., Courtroom A, 15th Floor,
13 United States District Court, 450 Golden Gate Avenue, San Francisco, California, 94102.

14 In the event a future **discovery dispute** arises, IT IS HEREBY FURTHER ORDERED that
15 before filing any discovery motion before this Court, the parties must comply with the following:

16 1. Lead trial counsel for both parties must meet and confer *in person* regarding the
17 matter(s) at issue. This meeting shall occur after other efforts to resolve the dispute,
18 such as telephone, e-mail, teleconference, or correspondence, have been unsuccessful.
19 Once those efforts have proved unsuccessful, any party may demand a meeting of
20 lead trial counsel to resolve a discovery matter. Such a meeting shall occur within ten
21 (10) calendar days of the demand. The locations of the meetings shall alternate. The
22 first meeting shall be at a location selected by counsel for Plaintiff(s). If there are any
23 future disputes, the next such meeting shall be held at a location to be determined by
24 counsel for Defendant(s), etc.

25 2. Within five (5) calendar days of the in-person meeting between lead trial counsel
26 referred to above, the parties shall jointly file a detailed letter with the Court, not to
27 exceed ten (10) pages without leave of Court, which will include the matters that
28 remain in dispute, a detailed substantive description of each side's position on each

1 such issue, and a description of each side's proposed compromise on each such issue.

2 In the absence of permission from the Court, the letter may not exceed ten (10) pages.

- 3 3. After the Court has received the joint letter, the Court will determine what future
4 proceedings, if any, are necessary.

5 In the event that the parties continue to be unable to resolve the matters regarding the timing
6 and scope of discovery, the Court will consider what future actions are necessary. These actions
7 may include the following: (1) sanctions against a party failing to cooperate in the discovery process
8 and meet and confer in good faith, as required by this Order, the Federal Rules of Civil Procedure,
9 and the Local Rules of this Court; and/or (2) requiring the Chief Executive Officers of each party to
10 attend the in-person, meet-and-confer sessions described above. The Court is not entering either of
11 these matters as an Order of the Court at this time, and fully expects counsel to meet their
12 obligations under this Order and under the Local Rules.

13 Regardless of whether the Court reschedules a hearing date, all opposition and reply papers
14 shall be timely filed according to the originally noticed hearing date, pursuant to Civil L. R. 7-3.

15 A party or counsel has a continuing duty to supplement the initial disclosure when required
16 under Fed. R. Civ. P. 26(e)(1).

17 All filings of documents relating to motions referred to the undersigned shall list the civil
18 case number and the district court judge's initials followed by the designation "(JCS)".

19 **ELECTRONIC FILING AND COURTESY COPIES**

20 Please refer to Civil L. R. 5-4 and General Order No. 45 for the Northern District of
21 California for information relating to electronic filing procedures and requirements.

22 BEFORE NOON ON THE NEXT BUSINESS DAY FOLLOWING THE ELECTRONIC
23 FILING, THE PARTIES ARE REQUIRED TO LODGE DIRECTLY WITH CHAMBERS ONE
24 **PAPER** COPY OF EACH DOCUMENT, WHICH IS TO BE DESIGNATED "JCS'S CHAMBERS'
25 COPY."

26 The failure of counsel or a party to abide by this Order may result in sanctions pursuant to
27 Fed. R. Civ. P. 16(f).
28

IT IS SO ORDERED.

Dated: April 28, 2011



JOSEPH C. SPERO
United States Magistrate Judge